

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal No. 16-4134 MV

QUANG HUY BUI,

Defendant.

**DEFENDANT HUY QUANG BUI'S SENTENCING MEMORANDUM**

Defendant Huy Quang Bui respectfully submits the following sentencing memorandum in advance of his September 19, 2017 sentencing. As set forth in detail below, Mr. Bui respectfully requests that this Court accept the plea agreement and impose a variant sentence of imprisonment for a period of 12 months and one day.

Mr. Bui is a Vietnamese national who, through hard work and dedication, overcame his modest upbringing and obtained a coveted job with Viettel Telecom ("Viettel"), the state-owned and large telecommunications company in Vietnam. His strong performance with Viettel led to a series of postings abroad, ultimately culminating in a posting to the United States. Postings abroad, particularly in the United States, are coveted by Vietnamese executives, and competition for these spots is substantial.

As part of his duties while posted in the U.S., Mr. Bui was regularly directed by other employees in Vietnam to procure various items for Viettel. The instant violation was the result of a request from Vietnam for Mr. Bui to obtain a Teledyne J402 engine. In an effort to fulfill this request in a timely manner and without complication, Mr. Bui attempted to cause the export of

the engine without having the U.S. party obtain a license from the Department of State, as required for the lawful export. As a result, he violated and has pled to a violation of 18 U.S.C. Section 554 (Smuggling Goods from the United States).

Mr. Bui has pled guilty and accepted responsibility for his criminal conduct. While his conduct involved an attempted unlicensed export from the United States, his offense is qualitatively different from most criminal export control cases. Unlike other export control violations that involve exports of items to parties or destinations that would never have been approved, the intended export of the J402 to Vietnam was a “licensable” transaction. Had a license been properly applied for, there is every reason to believe it would have been granted in light of licensing policy in effect at the time. At the time of the offense, U.S. law and licensing policy did not prohibit export of the J402 or similar items to Vietnam—an allied country. U.S. law, the International Traffic in Arms Regulations (“ITAR”), required that prior to an export of the engine or other defense articles to Vietnam, an application for a license must be made by an eligible U.S. person, the application and accompanying data be reviewed, and a license or other authorization must be granted.

As detailed below, the applicable licensing policy in effect at the time of the conduct would have permitted a license to be granted. This is in marked contrast to policies applicable to other destinations, such as China or Iran, to which no U.S.-origin defense articles can be licensed for export. Had Mr. Bui merely elected to wait for a license prior to attempting this export, the State Department in all probability would have granted the license. Thus, even if the attempted export had succeeded, no technology would have gone to Vietnam that would not have been approved for export if proper procedures had been followed. The export would not have resulted

in harm to U.S. national security or foreign policy interests, other than the violation of the underlying regulatory regime.

This matter is also unique because Mr. Bui was not a rogue actor engaged in diversion efforts. At all times, Mr. Bui was working at the direction of his employer. Viettel requested that he acquire the engine and have it sent to Vietnam. This case also differs from other export control prosecutions because there was no risk of diversion of the technology to a prohibited end-user or end-use application. As noted above, applying State Department licensing policy for Vietnam in effect at the time, the export would have likely been licensed. Viettel would have qualified as a legitimate end-user, and there is no indication that there was a risk of diversion to a prohibited end-user, such as a party in China or Iran. By contrast, in other criminal export control cases involving unlicensable transactions to *prohibited* destinations, this Court has sentenced defendants to 18 months imprisonment.

In light of these factors, and with reference to other sentencing decisions of this Court, a sentence of 12 months and one day would be sufficient but not greater than necessary to comply with the purposes of punishment set forth at 18 U.S.C. Section 3553(a)(2).

## **I. Background**

On October 26, 2016, a federal grand jury returned a two-count indictment charging Mr. Bui with violations of 22 U.S.C. Section 2778 (Arms Export Control Act) and 18 U.S.C. Section 554 (Smuggling Goods from the United States). Doc. 2. On June 6, 2017, pursuant to an agreement with the United States, Mr. Bui entered a plea of guilty to Count Two of the indictment, charging a violation of smuggling, per 18 U.S.C. Section 554. Mr. Bui's plea agreement contains a stipulation, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C),

that Mr. Bui will be sentenced to a term of imprisonment of not less than 12 months and one day, and not more than 24 months.

As set forth in the Presentence Report (“PSR”),<sup>1</sup> Mr. Bui violated 18 U.S.C. Section 554 by seeking to have a Teledyne J402 turbojet engine exported from the United States to Vietnam while knowing that an appropriate export license had not first been obtained from the State Department by the U.S. persons eligible to request such a license. The J402 is a small jet engine commonly used in unmanned aerial vehicles. The J402 is contained on the United States Munitions List, such that a license or other authorization is required from the Department of State before that item may be exported from the United States to any destination, including Vietnam.

## **II. Sentencing Framework**

Sentencing in a federal criminal case is a two-step process. First, this Court must determine the applicable guideline range as calculated under the United States Sentencing Guidelines. Second, the Court must make an individualized assessment of the factors reflected in 18 U.S.C. Section 3553(a) to determine an appropriate sentence for the particular defendant. *See Nelson v. United States*, 555 U.S. 350, 351 (2009) (“the sentencing court must first calculate the Guidelines range, and then consider what sentence is appropriate for the individual defendant in light of the statutory sentencing factors . . .”). After calculating the applicable guideline range and applying the now familiar sentencing factors reflected in 18 U.S.C. Section 3553(a), the Court must impose a sentence that is “sufficient but not greater than necessary to comply with the purposes of punishment” as reflected in 18 U.S.C. Section 3553(a)(2). Consideration of those factors suggests that a sentence of 12 months and one day is appropriate for Mr. Bui.

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<sup>1</sup> All references to the PSR are to the amended version as disclosed on September 1, 2017.

### **III. Section 3553(a) Factors**

#### **A. Mr. Bui's History and Characteristics.**

Reviewing Mr. Bui's history and characteristics as set forth in the PSR, two points stand out. First, Mr. Bui has no criminal history and there is nothing in his background to suggest that Mr. Bui will re-offend in any way. He is a hard-working and loyal employee. Second, the information in the PSR confirms that Mr. Bui committed the instant offense in his capacity as an employee. He did not determine which technologies to acquire. He was told what was required. His error was in executing the direction without making sure the transaction was fully compliant with law. This violation can be seen as a result of Mr. Bui's over-eagerness to impress his superiors in Vietnam, in hopes of meeting company objectives and obtaining a permanent assignment in the United States for himself and his family. Ultimately, Mr. Bui's work ethic and his desire to succeed in the United States prevailed over his otherwise sound judgment, with the unfortunate consequence that his promising career has been badly damaged, and his dream of making a life in the United States has effectively evaporated.

The PSR presents an accurate picture of Mr. Bui as a young man who grew up in relative poverty in Vietnam, and who overcame the associated challenges through hard work and determination. As detailed in the PSR, Mr. Bui grew up in Nam Dinh province, in rural Vietnam. *See* PSR ¶¶ 66-67. Mr. Bui's parents worked modest jobs in an effort to provide basic necessities for the family. *Id.* Mr. Bui's father worked as an instructor in a teachers' college and as the keeper of a local temple, while his mother worked in a garment factory and sold food and candy to her co-workers. *Id.* Mr. Bui himself began working at an early age in an effort to contribute to the well-being of his family. *Id.*

In 1995, when Mr. Bui was approximately 15 years old, the family's financial situation became so dire that his mother elected to go to Russia to work in a garment factory to earn a better living and save money for Mr. Bui's college tuition. *Id.* ¶ 68. The absence of his mother during this time had a profound emotional impact on Mr. Bui, and perhaps more importantly, instilled in Mr. Bui a feeling of "extra responsibility not to disappoint his family." *Id.* Mr. Bui's diligent pursuit of higher education reflects this drive and commitment. From 1999 to 2007, Mr. Bui obtained two advanced degrees from universities in Vietnam. He attended the University of Foreign Languages from 1999 to 2003. He majored in English. His second degree is from the University of Foreign Trade in Vietnam, which he attended at night from 2003 to 2007. His major was "External Economics."

After graduation, in 2007 Mr. Bui achieved a position at Viettel, the largest telecommunications company in Vietnam, with over 35,000 employees. Viettel operates in many sectors of the telecommunications business, but has a particular emphasis on building telecommunications networks in developing countries, including in Latin America and South America. Getting this position with Viettel represented a tremendous achievement for Mr. Bui given his modest roots and the fact that jobs with large international companies are exceedingly rare in a developing country like Vietnam, where the average monthly income is less than \$300.

In light of his background and working experience, Viettel soon deployed Mr. Bui overseas. During his first few years with Viettel, Mr. Bui was posted to developing countries like Cambodia and Haiti to work on various telecommunications operations for Viettel. These foreign postings were an honor for Mr. Bui, as they are reserved for promising executives who are capable and expected to make substantial contributions to the company in the future. Yet these overseas assignments also posed a substantial challenge for Mr. Bui. His educational background

included no training on many practical aspects of conducting business in a foreign country, including training relating to compliance with local laws. Viettel, for its part, provided no training relating to compliance with foreign law, including export control law or Customs, prior to sending Mr. Bui overseas.<sup>2</sup>

In early 2013, Viettel assigned Mr. Bui to a posting in Florida, where his principal responsibility was to promote sales of telephone minutes and other services to the Haitian and Peruvian diaspora in the United States. As with his previous postings, Mr. Bui received no training as to U.S. legal compliance. Running these new marketing efforts in the United States, Mr. Bui was left to figure things out on his own.

By March 2013, while still posted in the United States, Viettel directed Mr. Bui to form the entity now known as VTA Telecom Corporation (“VTA”) in Florida as a subsidiary of Viettel. VTA was formed with a goal of conducting a variety of legitimate business activities in the United States, including the possible development of a Viettel telecommunications network in the United States. At all relevant times from Oct. 2013, Mr. Bui served as a Vice-President of VTA.<sup>3</sup>

As time went on, per the initiative of Viettel, VTA’s mandate grew to include assisting Viettel in procurement efforts for research and development projects in Vietnam. As to this facet of VTA’s business, Mr. Bui was responsible for receiving requests from Vietnam for various products, negotiating the purchase of those products from suppliers in the United States and elsewhere and arranging for shipment to Vietnam. In an effort to secure a long-term posting in

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<sup>2</sup> VTA Telecom confirmed in its voluntary self-disclosure submitted on July 17, 2017 to the Departments of State and Commerce that neither it nor Viettel had provided Mr. Bui or similarly situated executives with training on U.S. export controls or related Customs laws.

<sup>3</sup> In connection with Mr. Bui’s posting to the United States, VTA sought and obtained an L1-A management transfer visa for Mr. Bui, and L-2 visas for his wife and son.

the United States, Mr. Bui was eager to demonstrate an ability to fulfill these requests in a timely and cost-efficient manner.<sup>4</sup>

A lack of training, combined with an eagerness to succeed, led Mr. Bui to his criminal conduct. Mr. Bui was unfamiliar with U.S. export control laws and their implications for the procurement activity he was undertaking at the direction of Viettel. While trying to fulfill the requests from Vietnam, Mr. Bui engaged in an informal effort to understand and apply the different sources of U.S. export control laws. In many instances, Mr. Bui understood and complied with the export control requirements relating to products he procured at the request of Viettel. At Mr. Bui's direction, VTA applied for and obtained several export licenses from the Department of Commerce. It is also apparent, however, that Mr. Bui lacked a full understanding of export control laws and the importance of full compliance with those laws.

This comment is not to diminish his acceptance of responsibility for his conduct. He knew that he was attempting to export an item without the required export license. Where his lack of training is important when considering an appropriate sentence is that it meant that while he knew his conduct was unlawful, he was unable to appreciate the importance and consequences of an unlicensed defense article export from the United States. Without training, an export license requirement might be perceived as a Customs formality or other paperwork that either can be addressed later or would not have material consequences. Without training, he could not have known the importance of the licensing process with respect to the presentation of data to the State Department for evaluation, even if the export would be approved.

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<sup>4</sup> The PSR asserts that Mr. Bui's status as an employee of Viettel, owned by the Ministry of Defense ("MOD"), and related documents confirming that he is an employee under the MOD renders him a foreign agent required to register under the Foreign Agents Registration Act (22 U.S.C. Section 611 *et seq.*) The PSR does not relay that a person in Mr. Bui's circumstances who is engaged in otherwise lawful commercial activities has no requirement to register. The commercial transactions noted in the PSR and which are the subject of the indictment were lawful commercial transactions that had unlawful components, that is, a failure to follow requirements to export the items lawfully purchased in the United States.



The absence of training also meant that he did not understand that his role, as a non-U.S. person, was to make sure that an eligible U.S. person, registered with the U.S. State Department, obtained export authorization for the transaction. Had he been aware of the particular importance of the ITAR, the straightforward nature of the licensing process, the fact that only the U.S. parties could have procured the license and that they, too, had an obligation to do so, he may have made other choices and waited for the license.

Since his guilty plea in this case, Mr. Bui has resigned from employment with VTA. He understands that his career is compromised. He also knows that he will be removed from the United States upon completion of his sentence and sent to Vietnam, where his future is uncertain.

#### **B. Nature and Circumstances of the Offense**

The offense to which Mr. Bui pled guilty involves an attempted unlawful export of a Teledyne J402-CA-400 turbojet engine to Vietnam. Based on technology developed during the 1960s, the J402 is a small jet engine commonly used in unmanned aerial vehicles, such as drones. The J402 is a successful technology that has been exported around the world. It and its associated technical data is now widely available.

As detailed in the plea agreement, an element of Mr. Bui's offense is that – prior to attempting the export – he failed to ensure that the U.S. parties had obtained an export license from the Department of State, Directorate of Defense Trade Controls (“DDTC”). If the export had proceeded in the absence of a license, it would have been unlawful. Although neither Mr. Bui nor VTA was eligible to register with, or obtain a license from, DDTC, Mr. Bui should have ensured that an eligible U.S. party, such as the seller, had obtained the proper license before shipment to Vietnam.<sup>5</sup> Had he done so, there would be no violation. Despite his failure to ensure

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<sup>5</sup> Neither Mr. Bui nor VTA Telecom were eligible to register with DDTC. Mr. Bui is a foreign person. During the relevant time period, VTA Telecom did not have a qualified U.S. person employee or official to sign its registration

that a license was obtained prior to export, there are several important aspects of this violation that support a sentence at the low-end of the stipulated range.

1. The Transaction Was Licensable.

As noted above, this case is materially different than many other matters involving export control violations because the intended export was licensable. Whether an unauthorized export was licensable is the primary mitigating factor considered by the State Department when adjudicating civil violations. *See* 22 C.F.R. Section 127.12(b)(3)(i) (stating as the first mitigating factor “[w]hether the transaction would have been authorized, and under what conditions, had a proper license request been made.”). In all likelihood the export of the J402 to Vietnam would have been approved by DDTC had the proper licensing procedure been observed. While Mr. Bui failed to wait until eligible U.S. parties followed proper licensing procedures, his is not a case of a defendant seeking to complete an export that would have been prohibited by the United States Government.

Per the plea agreement, Mr. Bui’s conduct was from on or about March 10, 2016 to July 19, 2016. During this period, Vietnam was eligible to receive defense items from the United States. Beginning in November 2014, U.S. licensing policy was to authorize exports on a case-by-case basis with the requirement that licensed exports increase Vietnamese maritime security and domain awareness. On May 23, 2016, the United States changed its policy to remove the qualification that exports be for maritime security and domain awareness. That put Vietnam in the same category as other U.S. comprehensive trading partners such as Japan or South Korea, rendering it eligible for all defense exports. The transaction attempted by Mr. Bui would have

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statement. *See* 22 C.F.R. Section 122.2(a). Mr. Bui and VTA were similarly ineligible to obtain an export license from DDTC. *See* 22 U.S.C. Section 2778(g)(5) (“A license to export an item on the United States Munitions List may not be issued to a foreign person.”). In this respect, the multiple directions provided to Mr. Bui by the agents that he was required to register with DDTC and obtain a license to export the J402 were not consistent with law. The agents knew that he was not a U.S. person.

been subject to one or the other of the licensing policies such that DDTC would likely have approved the export.

The Government contends that Mr. Bui and Viettel intended to use the J402 engine in a missile, an anti-ship weapon. If that were the case, his efforts from March to May 2016 to export of the J402 to Vietnam would have fallen squarely within the specific licensing policy that promoted maritime security and would have approved this export. His efforts to export the engine after May 2016 would have been subject to the even more liberal licensing policy for Vietnam that treated Vietnam in the same manner as other U.S. allied trading partners.

Per the policies then in effect, there is every reason to believe that DDTC would have granted a license had Mr. Bui waited for a license. DDTC grants a vast majority of license applications that are consistent with licensing policies. According to 2013 data from DDTC, only 0.36% of license applications submitted to DDTC were denied that year. This high rate of approval demonstrates that the purpose of the licensing regime is not to deny the requested export, but to make sure that the U.S. government (Departments of Defense and State) have detailed information in advance of an export as to what product is exported, to whom and for what purpose, and to impose conditions, as appropriate.

The fact that this transaction would have been approved is crucial to determining a fair sentence. If the unlicensed export had been completed, the U.S. government would have been denied information about an export that the U.S. government would have approved. While not minimizing that important licensing function, this underscores that Mr. Bui did not attempt an export that would have been prohibited. Rather, he failed to ensure that a transaction that would have been approved, was, in fact, approved. This is far different than the harm that would result from an unauthorized export to a hostile country or unknown end-user as is the case in most

export control prosecutions. The lack of harm presented by an unlicensed but licensable transaction is reflected in United States Sentencing Guidelines. The Guidelines specifically assume that a violation could, or did, harm U.S. national security or foreign policy interests. *See* USSG §2M5.2, note. 1 (“The base offense level assumes that the offense conduct was harmful or had the potential to be harmful to a security or foreign policy interest of the United States.”). As discussed, the attempted unlicensed export would likely have been licensed, meaning that contrary to the assumption of the Sentencing Guidelines, this case presents no harm to “a security or foreign policy interest of the United States.”

## 2. The Contemplated Export Presented No Risk of Diversion.

The Government asserts and the evidence confirms that the intended end-user of the J402, Viettel, is wholly owned by the Vietnamese Ministry of Defense. The evidence further establishes that the Government of Vietnam intended to use the J402s in its own program for the development of unmanned aerial vehicles, including Harpoon missiles.

Unlawful exports usually raise a risk of diversion to unknown or prohibited parties for unknown applications. In this case, the end-user was known and the end-use was consistent with DDTC licensing policy, as it was evidently part of the Vietnamese government’s legitimate maritime security or domain awareness programs. There was, therefore, no risk of diversion or improper end-use.

## 3. Mr. Bui Worked at the Direction of Others at Viettel.

Unlike most export control cases, that involve independent actors working for their own benefit and profit, Mr. Bui’s efforts to procure the J402 were undertaken in the course of his employment and at the express direction of his colleagues in Vietnam.<sup>6</sup> Mr. Bui did not engage in this conduct on his own initiative. He engaged in the transaction for his employer, making a

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<sup>6</sup> Nothing suggests that he was directed to attempt the unlawful export of the engine, however.

material error in judgement on how to execute the requested transaction. Mr. Bui's offense was the result of his desire to impress his superiors in Vietnam with quick results, in hopes of obtaining a permanent posting in the United States. That Mr. Bui was acting on behalf of his employer is an unusual circumstance for export prosecutions that normally involve independent actors working for personal profit.

4. Mr. Bui's Cooperation after Indictment Is Significant and Material.

Again presenting unusual circumstances for a criminal export control matter, following his arrest and indictment, Mr. Bui cooperated fully with VTA's internal investigation and rapid disclosure of this matter to the Commerce and State Departments, as well as all other export control non-compliance that could be identified. This disclosure is materially important to these two agencies with primary jurisdiction over export controls. The disclosure provides the agencies with detailed information, allowing them to assess efficiently any export non-compliance, remediation and mitigation. VTA engaged U.S. counsel and performed an extensive review of all transactions that might have presented a risk of an export control violations to ensure that this disclosure was complete.

Mr. Bui cooperated fully with this internal investigation. On learning of the importance of these controls and need to provide a full report to the agencies, Mr. Bui provided extensive interviews and other cooperation. It is unusual that a criminal defendant, at that time not protected by a plea agreement, would cooperate fully to ensure that U.S. government interests are met as quickly as possible. With his help, on July 17, 2017, VTA submitted its final voluntary self-disclosure to the State and Commerce Departments. This voluntary self-disclosure reported on a variety of potential violations, including paperwork errors that go well beyond those reflected in the indictment in this case.

Mr. Bui, through his counsel, also assisted VTA in developing compliance measures designed to address the gaps in controls and training that contributed to this offense. VTA has implemented compliance measures that meet State and Commerce Department standards and include the hiring of a full time compliance professional. Mr. Bui's decision to cooperate with this investigation and proper response by VTA demonstrates that he now understands the importance of the ITAR and related U.S. laws and the need for compliance.

5. The Other Incidents Identified in the PSR Do Not Suggest an Unlawful Intent.

The PSR identifies a number of other transactions in which Mr. Bui was involved and suggests that these transactions demonstrate an intent to evade licensing requirements. But the facts contained in the PSR cannot yield an inference that Mr. Bui intended to violate U.S. export control laws. At most, these facts suggest a lack of clarity on Mr. Bui's part as to applicable licensing requirements.

For example, the PSR recites certain facts relating to Mr. Bui's efforts to procure video trackers from a Florida company called EO Imaging. *See* PSR ¶¶ 20-25. While suggesting an unlawful intent on Mr. Bui's part, the PSR accurately reflects the numerous questions that Mr. Bui posed concerning applicable export control requirements and the absence of any effort to conceal his desire to export these items. *See id.* ¶ 21 ("The defendant also asked what permission he would need to resell the units to 'international partners.'"); *id.* ¶ 24 (noting that Mr. Bui stated that "he wanted to export 10 pieces to a foreign customer and requested information on how to obtain a license.")). While the PSR concludes that these items were ultimately exported without a license, it is unclear if this was done collaboratively with other employees or at Mr. Bui's sole direction. *Id.* ¶ 25.

The PSR also describes discussions between Mr. Bui and Space Electronics concerning the potential purchase of a KSR600 Center of Gravity Moment of Inertia measurement equipment. Nothing about these discussions suggests an unlawful intent. The PSR notes that Mr. Bui “related the items would be sent to Vietnam, and asked about ITAR compliance.” *Id.* ¶ 27. It also notes that Space Electronics ultimately engaged directly with Viettel and applied for a license with the Department of Commerce. *Id.* ¶ 28. Mr. Bui or VTA did not purchase or export the KSR6000, and he did not provide Space Electronics with any sort of down payment for the item.

Finally, the PSR describes discussions between Mr. Bui and certain individuals concerning the possible purchase of a gimbal system. *Id.* ¶ 29. The PSR makes this transaction sound nefarious by noting that Mr. Bui “related that he did not have the time to go through with an export license” and “asked that all paperwork in the deal have his name and company name removed.” Such conduct, however, does not yield an inference of unlawful intent. Assuming the U.S. party (*e.g.*, the seller) could apply for and receive the appropriate export license, this transaction would be lawful. Mr. Bui would not be required to obtain such license himself, nor would he be legally eligible to do so. As with the KSR6000, Mr. Bui did not purchase or export the gimbal, and he did not provide the vendor with any sort of down payment for the item.

### **C. A Sentence of 12 Months and One Day Would Adequately Serve the Purposes of Punishment.**

A sentence of 12 months and one day imprisonment would adequately serve the purposes of punishment as reflected in 18 U.S.C. Section 3553(a)(2).

#### **1. The Proposed Sentence Would Reflect the Seriousness of the Offense**

While Mr. Bui makes no attempt to minimize the seriousness of his conduct, this offense is less serious than that presented by most criminal export control cases. Mr. Bui should have

ensured that a U.S. party obtained a license prior to exporting the J402. But, as discussed above, this was a licensable transaction with a U.S. ally.<sup>7</sup> As a result, Mr. Bui pled to a violation of smuggling under 18 U.S.C. Section 554, rather than to a violation of the ITAR. A sentence of 12 months and one day would adequately reflect the nature of this offense.

2. The Proposed Sentence Would Afford Adequate Deterrence to Criminal Conduct and Would Protect the Public from Future Crimes.

Mr. Bui's once promising career in the United States is over. Following service of his sentence he will be removed to Vietnam, and it is unlikely that he will ever be allowed to return to the United States. This criminal case, and the associated disclosure process, has caused VTA and Viettel to incur substantial expenses. Undoubtedly, this has damaged Mr. Bui's standing with his employer. In addition, Mr. Bui will be separated from his wife and young son during his term of imprisonment. His wife and son are returning to Vietnam soon after Mr. Bui is sentenced. He is a Vietnamese national who will face added difficulties during incarceration due to language and cultural differences. All of these secondary effects have had, and will continue to have, a far greater deterrent effect than would any additional period of incarceration beyond the 12 months and one day that Mr. Bui has accepted through the plea agreement and is now requesting from this Court.

These same factors suggest that the requested sentence is adequate to protect the public from any possibility of future criminal activity by Mr. Bui. Given his lack of any criminal history, Mr. Bui shows no inclination toward recidivism, and his removal from the United States will be the principal measure of protection against any future crimes. In addition, the Court

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<sup>7</sup> The increasing defense cooperation between the U.S. and Vietnam has been the subject of much publicity lately, especially in light of the August 8, 2017 meeting between Defense Secretary James Mattis and the Vietnamese Minister of Defense. *See Ex. A.* The increasing cooperation between these countries is largely a result of Chinese efforts an expansion in the South China Sea and the joint efforts of the United States and Vietnam to resist such expansion.



should also consider the remedial measures undertaken by VTA with Mr. Bui's support to ensure compliance with all U.S. export control laws going forward. These measures demonstrate his and the company's respect for the law, and will go a long way toward protecting the public from any future violations.

3. The Requested Sentence Would Avoid Unwarranted Sentencing Disparities Between Similarly Situated Defendants Convicted of Similar Conduct.

In April 2015, this Court sentenced two Chinese nationals, Bo Cai and Wentong Cai, for attempting to smuggle an ARS-14 MHD angular rate sensor to China, despite their knowledge that this item could not be exported without a license and that no license would be granted due to an arms embargo on China. *See United States v. Cai*, 13-4044 MV. As reflected in its judgment, and as urged by the Government, the Court sentenced Wentong Cai to 18 months imprisonment. No judgment as to Bo Cai is publicly available.

Per the plea agreements in that case, there are aggravating facts in *Cai* that are not present here. *See* Exhibits B, C. Unlike Mr. Bui's case, *Cai* involved an attempted export of a military item to a prohibited country—China. Such a transaction would not have been licensable under any set of circumstances. Unlike Mr. Bui, the Cais were not acting in the course of their employment and apparently engaged in their criminal activity out of a desire for personal monetary gain. The end-users and end-use were not known, because they were engaged in trafficking the munitions. Their conduct presents a substantially higher risk of diversion than does the attempted export by Mr. Bui.

At the same time, all of the mitigating factors identified in the Government's sentencing memorandum in *Cai* are present here. *See* Ex. D. As in *Cai*, by pleading guilty, Mr. Bui has saved both the Government and Teledyne, the manufacturer of the engine, substantial resources

that would otherwise have been required to try this case. *See id.* at 2. As in *Cai*, the idea of procuring the J402 did not originate with Mr. Bui, but with other parties (*i.e.*, his corporate colleagues in Vietnam). Mr. Bui's criminal conduct was motivated by a desire to please his corporate superiors in hopes of a permanent posting in the United States. Finally, in its sentencing memo for Wentong Cai, the Government noted that "[i]nstead of embarking on what, by all indications, would have been a successful scientific career, he will be removed from this country just shy of obtaining a prestigious degree, after years of study and hard work." *Id.* at 3. The very same is true of Mr. Bui. Having devoted years of hard work to achieve a promising career and a posting in the United States, the fruits of his labor will be lost as a result of this offense.

Finally, consideration of Mr. Bui's offense should include weighing the fact that his actions prompted his employers to file – with his assistance – a full voluntary self-disclosure with the State and Commerce Departments. That disclosure and the remedial measures implemented to meet State and Commerce standards will promote future compliance by VTA and its business partners with export control laws. Mr. Bui fully supported this disclosure effort by providing information relating to his own conduct and that of others at VTA. In the absence of an agreement with the Government, the voluntary provision of information to the Government is almost unheard of for an individual who has been charged with a violation of federal law. In short, Mr. Bui's case presents fewer aggravating factors and more mitigating factors than does *Cai*. Comparing the two cases suggests that a sentence lower than 18 months is appropriate for Mr. Bui.

**CONCLUSION**

For the foregoing reasons, Mr. Bui respectfully requests that this Court accept the plea agreement and impose a sentence of 12 months and one day imprisonment.

**HOLLAND & HART LLP**

*/s/ John C. Anderson*

By \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that on this September 1, 2017, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

AUSA Jon Stanford, jon.stanford@usdoj.gov

*/s/ John C. Anderson*

John C. Anderson